TRIBUNAL DIVISION

PROGRAM AREA REPORT

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THE TRIBUNAL DIVISION

The Children's Commission Tribunal Division consists of a Chair, a roster of independent part-time appointed panel members, and a Tribunal Officer.

In the year 2000, there were 16 members on the roster. The panel members are appointed by the Minister of the Attorney General of B.C., and are selected pursuant to criteria set out in section 6 of the *Children's Commission Regulation*. These criteria require the panel members to demonstrate an understanding of the following:

a) key aspects of British Columbia's child, youth, family and community service system, including governing legislation, policy and service delivery mechanisms,
b) the essential elements of conducting a fair and objective review,
c) alternate dispute resolution processes,
d) child and youth development and the special circumstances, rights including those under section 70 of the *Child, Family and Community Service Act*, and service needs of children in care or otherwise served by the child service system of government,
e) the characteristics of British Columbia's diverse cultural, racial, linguistic and religious communities and the unique issues that affect aboriginal children, their families and communities, and
f) effective communication with children, including children who have special service needs.

The Mandate of the Tribunal Division

Panels of the Children's Commission Tribunal Division review and mediate complaints about violations of the rights of children in care and complaints about decisions made by the Ministry for Children and Families concerning the provision of a designated service to a specific child.

The complaints referred to the Tribunal Division are complaints that have not been resolved by the complaints process of the Ministry for Children and Families, or subsequently the Children's Commission complaint resolution and review process. They are referred to the Tribunal Division by the Children's Commissioner, based on jurisdictional criteria outlined in the *Children's Commission Act*.

At the completion of a review, the panel makes findings about the issues in the complaint.

In cases where violations of the rights of a child in care are at issue, if the panel determines that a child's rights have been breached, the panel can issue an order to the director caring for the child to ensure that the breach does not continue and make recommendations to the director about the steps that the director might take to achieve that result.

In cases where provision of designated services by the Ministry are at issue, if the panel determines that a complaint is justified, the panel can order reconsideration of the decision that was the subject of the complaint and make recommendations about the steps that might be taken to resolve the complaint.

In the event that a panel issues orders and recommendations, it can request the director or person in charge of the designated service to give reasons if a decision is made not to take any steps or to follow the panel's recommendations. Upon receipt of the response, the panel may choose to modify any of its recommendations. Following this step, the panel has completed its role.

The last step in the review process is for the Children's Commissioner to consider the Ministry's response and determine if the steps taken are an adequate or appropriate response to a panel's recommendations. In the event that the Children's Commissioner is of the opinion that the steps taken were not adequate or appropriate, he may present a report of the matter to the Minister of Children and Families and make the report public within 30 days after it was presented to the Minister.

The Review Process

Upon receiving a referred complaint, the Chair of the Tribunal Division appoints a panel of between one to three individuals from the panel roster to review the complaint, with one individual acting as chair of the panel.

The *Children's Commission Act*, section 15, gives each panel discretion in determining how a review of a complaint will be conducted. Most panels conduct oral hearings of complaints. However, depending on the circumstances of the complaint, some panels conduct reviews based on documentation review and written submission only, or by some other means. In each review, the parties have an opportunity to present evidence to support their case.

Many panels hold pre-hearing conferences to deal with preliminary issues such as exchanging documents and other procedural matters, and to canvas possible settlement options. At any time during the review, the panel may employ the use of alternative dispute resolution processes as a method of resolving the complaint.

Parties to the review include the complainant, the director caring for the child, and, if the child is an aboriginal child, the designated representative of the Indian band or aboriginal community. Panels have the discretion to recognize other individuals as parties to the review. The Office of the Child, Youth and Family Advocate is notified of all referrals to the tribunal division and decides if the child requires advocacy support through their office.

Panels may hear directly from the child to whom the complaint relates. The *Children's Commission Regulation* provides special provisions for a panel to interview a child in the absence of the parties if the panel believes that it is not in the child's interests to attend a hearing.

Panels also have the power to summon individuals to attend before them to provide testimony and to require those persons to bring documents. Panels also have the right to obtain any information that is in the custody of the Director of Child Protection or a public body as defined in the *Freedom of Information and Protection of Privacy Act*.

In order to protect privacy interests, hearings by panels are not open to the public unless the panel orders otherwise. All documents and submissions presented to the panel are subject to confidentiality provisions.

Following the completion of their review, each panel issues a written decision with reasons.

In certain circumstances set out in the *Act* and the *Regulation*, complaints can also be dismissed or terminated by a panel.

Publication

Decisions of the Children's Commission Tribunal Division are published on the Children's Commission Web Site within 30 days of the completion of the review. Decisions are published in such a manner as to protect privacy interests. This includes ensuring that information such as names and locations are removed from the decision.

Cases Reviewed by Tribunals in 2000

As indicated above, the tribunal division can review complaints about breaches of the rights of children in care and complaints about decisions made by the Ministry for Children and Families concerning the provision of a designated service to a specific child.

In 2000, seventeen cases were in front of a tribunal division panel. Of these seventeen cases, six were referred to the tribunal division in 2000; the remaining eleven were referred in 1998 or 1999.

Eleven cases were completed by the tribunal division in 2000.

These cases were about the following types of complaints:

- complaints about breaches of a child in care's rights only – two cases;
- decisions made by the Ministry for Children and Families only – four cases; and
- complaints about both breaches of a child in care's rights and complaints about decisions made by the Ministry for Children and Families – five cases.

The four cases in which the complaints were comprised only of decisions made by the Ministry for Children and Families were about the following issues:

- access to special needs services – two cases; and
- adequacy of child protection investigations – one case.

In the five cases in which Ministry decisions were reviewed along with allegations of breaches of children's rights, the Ministry decisions were about the following issues:

- adequacy of child protection investigations – two cases;
- adequacy of Ministry planning for a child – two cases;
- placement decisions – three cases; and

- the Ministry's internal complaints procedure – two cases.

(*Note – numbers of issues do not equal five as some cases had more than one issue to be reviewed.)

Of the eleven cases completed by the tribunal division in 2000, the relationship of the complainant(s) to the child(ren) in question was as follows:

- Grandparent(s) – one case;
- Parent(s) – seven cases;
- Foster parent(s) – two cases;
- Advocate – one case; and
- Child – one case.

(*Note – numbers of cases do not equal eleven as in one case both the parents and the child were the complainants.)

Disposition of Cases Completed in 2000

Two of the eleven cases completed in 2000 were terminated due to mediated settlements that occurred during the process, and three were dismissed following the withdrawal of the complaint by the complainant(s).

The remaining six cases went through the entire review process. The outcomes of the remaining six cases were as follows:

Case #1 – This child's rights were found to have been breached in relation to the right to be informed about plans of care, the right to be consulted and to express views, and the right to be informed of rights under the *Child, Family and Community Services Act* and the procedures available for enforcing their rights. Complaints about decisions were found justified in relation to four decisions pertaining to the adequacy of assessments of the child's need for protection and the adequacy of the Ministry's internal review process. One additional complaint in relation to the adequacy of an assessment of the child's need for protection was found not justified.

Case #2 – Complaints about decisions regarding provision of special needs services, and waitlisting practises were found justified.

Case #3 – The child's rights were found to have been breached in relation to an incident that breached both the right to be informed about plans of care, and the right to receive medical and dental care when required.

There were 10 other allegations of rights violations, but breaches of these rights were not found.

Case #4 – Complaints about decisions pertaining to the adequacy of two child protection investigations were found justified.

Case #5 – Complaints about decisions were found justified in relation to the adequacy of child protection investigations and the Ministry's internal complaints review process. Complaints about two other decisions pertaining to the adequacy of a child protection investigation and a risk assessment were not found justified.

Case #6 – The children's rights were found to have been breached in relation to: the right to be fed, clothed and nurtured according to community standards and to be given the same quality of care as other children in the placement; the right to be informed about their plans of care; and the right to be consulted and to express their views, according to their abilities, about significant decisions affecting them. Complaints about decisions to move the children from a placement were found justified in relation to both decisions at issue.

In all but one of these six cases, the panels made orders and recommendations.

The Children's Commissioner found the Ministry's response to the panel's recommendations not to be adequate in one of the cases, and a report was then made to the Minister of Children and Families and made public.

Regions

The eleven cases completed by the tribunal division in 2000 originated in the following regions:

- Vancouver/Richmond – three cases;
- Capital – two cases;
- Upper Fraser – two cases;
- South Fraser – one case;
- Simon Fraser – one case; and
- Okanagan – one case.

Of the cases completed by the tribunal division in 2000, none were from the other five regions (Kootenay; North; Thompson/Cariboo; Coast Garibaldi/North Shore; and Central/Upper Island.